

*United States Court of Appeals
for the Second Circuit*



APPENDIX

76-6171

DOCKET NO.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NAPOLEON RICHARDSON and FRANCISCO
CHAIMOWICZ, as Executors of the
Estate of CONCEPCION BRODERMANN
STUETZEL, also known as
CONCEPCION BRODERMANN,

Plaintiffs-Appellants

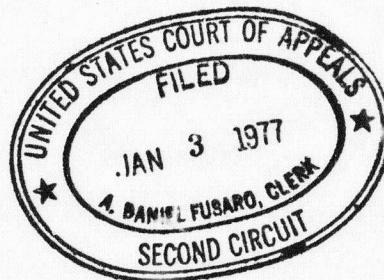
v.

WILLIAM E. SIMON, as Secretary of
the Treasury of the United States,

Defendant-Appellee

and the BANK OF NOVA SCOTIA,

Defendant.



APPENDIX

APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT OF
NEW YORK

SAMUEL GURSKY
Attorney for Plaintiffs-Appellants
342 Madison Avenue
New York, N.Y. 10017
Mu2-5527

PAGINATION AS IN ORIGINAL COPY

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NAPOLEON RICHARDSON and FRANCISCO CHAIMOWICZ, as Executors of the Estate of CONCEPCION BRODERMANN STUETZEL, also known as CONCEPCION BRODERMANN,	Plaintiffs	COMPLAINT CIVIL ACTION
- against -		File No. 76C-537
WILLIAM E. SIMON, as Secretary of the Treasury of the United States, and the BANK OF NOVA SCOTIA,	Defendants	

The plaintiffs, complainant of the defendants, allege:

1. The last Will and Testament of Concepcion Brodermann Stuetzel, also known as Concepcion Brodermann, was duly admitted to probate by the Surrogate's Court of Nassau County, on June 2, 1972, and the plaintiffs herein were duly appointed executors by said Court, of said last Will and Testament on such date.
2. That said plaintiffs were and are residents of the County of Nassau, State of New York, and citizens of the United States of America.
3. The defendant, William E. Simon, is Secretary of the Treasury of the United States. The predecessors of the defendant as Secretary of the Treasury, were authorized to formulate and issue and administer certain regulations known as Cuban Assets Control Regulations.
4. The decedent, Concepcion Brodermann Stuetzel, was married to Carl W. Stuetzel and lived with her husband in Cuba.

5. During the lifetime of her husband and herself, she and her husband jointly deposited for safekeeping, cash and stock certificates of the Standard Oil Company of New Jersey with the defendant, New York Branch of the Bank of Nova Scotia, in a sum in excess of Ten Thousand (\$10,000.00) Dollars.

6. With the advent of the Castro Regime, the United States blocked or froze all assets of Cuban Nationals in the United States.

7. Carl W. Stuetzel died in Cuba on August 24, 1965.

8. Concepcion Brodermann Stuetzel, his widow, entered the United States as a permanent resident, on October 13, 1969.

9. On or about November 4, 1969 Concepcion Brodermann Stuetzel made application for a license to release the moneys in the joint account in the Bank of Nova Scotia in New York, New York and the shares of stock of Standard Oil Company of New Jersey, which were in the names of her husband and herself. Copy is attached hereto and made a part hereof.

10. On or about December 12, 1969 the Secretary of the Treasury authorized the Bank of Nova Scotia, New York, New York, to pay 50% of the balance in the blocked dollar and safekeeping accounts on its books in the name of Concepcion Brodermann Stuetzel and/or Carl W. Stuetzel, but refused to release the remaining 50%. Copy of such license is attached hereto and made a part hereof.

11. On October 31, 1971 Concepcion Brodermann Stuetzel died in the Nassau County Medical Center, East Meadow, New York, a permanent resident of Nassau County, State of New York.

12. Under the terms of her Will, the residuary estate (which consists of the blocked assets in the possession of the Bank of Nova Scotia) is devised to a niece, Elena Richardson, a daughter of the testatrix's sister.

13. That said Elena Richardson, Napoleon Richardson, and Francisco Chaimowicz, are citizens of the United States, residing in the State of New York.

14. Thereafter, on or about June 30, 1972 plaintiffs as executors of the Estate of Concepcion Brodermann Stuetzel, filed an application with the Foreign Assets Control of the Treasury Department of the United States, for the release of the remaining blocked money and shares of stock of the Standard Oil Company of New Jersey (now known as Exxon Corp.) consisting of \$12,873.99 in cash, and 770 shares of Exxon Corp., the present value of which is \$68,145.00.

15. That the Secretary of the Treasury, by his acting director of Foreign Assets Control, has refused to release and unblock the said assets which are the property of the Estate of Concepcion Brodermann Stuetzel still in the possession of the New York branch of the Bank of Nova Scotia.

16. That the said refusal to release and unblock the aforesaid assets belonging to American Permanent Residents and Citizens, is unconstitutional as it deprives the plaintiffs of their property without due process of law.

17. That the Secretary of the Treasury has exceeded his statutory authority in refusing to release and unblock the assets

of the plaintiffs as citizens and permanent residents of the United States of America, and that plaintiffs are entitled to unrestricted license which will enable them to dispose of this property so blocked.

WHEREFORE, Plaintiffs demand judgment setting aside and annulling such determination of the Foreign Assets Control of the Secretary of the Treasury, and for an order or mandate directing the said Foreign Assets Control of the Secretary of the Treasury to unblock and release the said assets to the plaintiffs now in the possession of the defendant, Bank of Nova Scotia, and directing said Bank of Nova Scotia to deliver to the plaintiffs the assets they hold which belong to the plaintiffs.

Dated: March 19, 1976

(S) SAMUEL GURSKY

Samuel Gursky
Attorney for Plaintiffs
Office & P.O. Address
342 Madison Avenue
New York, New York 10017
Tel. MU 2 - 5527

Form TFAC-8 (Rev.)
TREASURY DEPARTMENT
FOREIGN ASSETS CONTROL

Application No. C

(For Treasury use only)

PLEASE PRINT OR TYPE
APPLICATION FOR A LICENSE

(To be executed and filed IN DUPLICATE with Foreign Assets Control, Federal Reserve Bank of New York, 33 Liberty Street, New York, New York 10045.) Attachments to applications, including any correspondence, should also be submitted IN DUPLICATE.

November 4, 1969

Date

TO THE SECRETARY OF THE TREASURY
% Federal Reserve Bank of New York

Sir:

In accordance with Part 515 of Chapter V, Subtitle B, of Title 31 of the Code of Federal Regulations, the undersigned hereby applies for a license to execute the transaction described below:

CONCEPCION BRODERMANN STUETZEL

A. (1) The name of the applicant is

(2) Applicant resides at or, in the case of a corporation, partnership, association or other organization, has its principal place of business at **94-32 59th Avenue Apt. 3D Elmhurst, New York 11373**

(Street)

(City)

(State)

(Country)

CUBA

(3) Applicant is and has been a citizen of **1883 (Date of Birth)**

since **her marriage, Sept. 15, 1906,**

a housewife
~~xxxxxxxxxxxxxxxxxxxx~~

(4) Since the applicant has been ~~engaged in the business of~~

(State nature of business)

B. The applicant desires a license in order to:

I was married to **David W. Stuetzel** in Havana, Cuba on Sept. 15, 1906. In Cuba, his Spanish name was **Carlos Guillermo Stuetzel y Schmid**. My husband was born in what is now a part of West Germany and became a citizen of Cuba in 1953. I was born in Cuba. My husband died in Havana Cuba on August 24, 1965. We had no children and no close relatives in Cuba. I arrived in the United States from Mexico as a permanent resident and am living with my niece, her husband and family and my only sister at Elmhurst, New York. My late husband and I have an deposit with the Bank of Nova Scotia, 37 Wall Street, New York, a joint account a sum of money, the exact amount I do not remember. They are also holding about 1500 shares of stock of Standard Oil Company of New Jersey which are also in the name of my late husband and myself. I need this money and property for my living expenses and for medical treatment. I must undergo surgical operations for cataracts on my eyes. This money and property will be used and spent in the United States for my benefit and that of my family here. No other persons have any interest in this money or shares of stock.

Applicant's No.

C. The applicant represents and warrants that, except as specifically stated below, no person other than those mentioned in item B above has any interest, direct or indirect, in the transaction or transactions for which a license is applied for herein.

D. The applicant represents and warrants that, except as specifically stated, he has personal knowledge of all the facts herein stated; that the same are correct and true; and that he does not have knowledge of any material fact in connection with such application which is not fully and accurately set forth herein.

E. The applicant represents and warrants that he has complied, and agrees that he will comply, in all respects, with all regulations, rulings, orders and instructions issued by the Secretary of the Treasury under Section 620(a), Public Law 87-195, and the Proclamation of the President of February 3, 1962, or under the authority of Section 5(b) of the Act of October 6, 1917, as amended, and with any and all licenses issued to the applicant pursuant thereto.

F. The applicant represents and warrants that no other application for a license authorizing the transaction here involved has been filed or is pending, except as follows:

Conrad Brodermann Stuetzel
(Signature of applicant)

(If this application is filed by an agent, attorney, or other person, for or on behalf of the applicant, the following statement should be executed.)

I, , certify that I am the
(Relationship to applicant)

of who is the applicant in the above application for a
(Name of applicant) license; that I am duly authorized to make the foregoing application on behalf of the applicant; that, except as otherwise specifically stated, I have personal knowledge of all the facts herein stated; that the same are true and correct; and that I do not have knowledge of any material facts in connection with said application which are not fully and accurately set forth herein.

.....
(Signature of agent)

.....
(Address)

NOTE.—If this application is executed outside of the United States, it must be executed under oath before a diplomatic or consular officer of the United States. Attention is directed to Title 18 U.S.C., Section 1001, which provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than 5 years, or both."

Copies of this form may be obtained at any Federal Reserve Bank or from the
Foreign Assets Control, Treasury Department, Washington, D.C.

License No. C - 4369

Date December 12, 1969

LICENSE

(Granted under the authority of section 620(a), Public Law 87-195, and under the authority of section 5(b) of the Act of October 6, 1917, as amended, Executive Order No. 9193 of July 6, 1942, Executive Order No. 9989 of August 20, 1948, and Part 515 of Chapter V, Subtitle B of Title 31 of the Code of Federal Regulations)

To Concepcion Brodermann Stuetzel
94-31 59th Avenue, Apt. 3D
Elmhurst, New York 11373

Sirs:

1. Pursuant to your application of November 4, 1969, the following transaction is hereby licensed: Bank of Nova Scotia, New York, New York is hereby authorized to pay you 50% of the balance in the blocked dollar and safekeeping accounts on its books in the name of Concepcion Brodermann Stuetzel and/or Carl W. Stuetzel. The remaining 50% remains blocked in the name of the Cuban decedent.
2. This license is granted upon the statements and representations made in your application, or otherwise filed with or made to the Treasury Department as a supplement to your application, and is subject to the conditions, among others, that you will comply in all respects with all regulations, rulings, orders and instructions issued by the Secretary of the Treasury under the authority of section 620(a), Public Law 87-195, or under the authority of section 5(b) of the Act of October 6, 1917, as amended, and the terms of this license.
3. The licensee shall furnish and make available for inspection any relevant information, records or reports requested by the Secretary of the Treasury, the Federal Reserve Bank of New York, or any other duly authorized officer or agency.
4. This license expires March 31, 1970, is not transferable, is subject to the provisions of Part 515 of Chapter V, Subtitle B of Title 31 of the Code of Federal Regulations, and any regulations and rulings issued pursuant thereto and may be revoked or modified at any time in the discretion of the Secretary of the Treasury acting directly or through the agency through which the license was issued, or any other agency designated by the Secretary of the Treasury. If this license was issued as a result of willful misrepresentation on the part of the applicant or his duly authorized agent, it may, in the discretion of the Secretary of the Treasury, be declared void from the date of its issuance, or from any other date.

Issued by direction and on behalf of the Secretary of the Treasury:

FOREIGN ASSETS CONTROL
FEDERAL RESERVE BANK OF NEW YORK
By _____

per pro
am

Attention is directed to 19 USC § 1592 and § 1595a; 18 USC § 545; 18 USC § 1001; and 50 USC App. 5(b) for provisions relating to penalties.

C. The applicant represents and warrants that, except as specifically stated below, no person other than those mentioned in item B above has any interest, direct or indirect, in the transaction or transactions for which a license is applied for herein.

D. The applicant represents and warrants that, except as specifically stated, he has personal knowledge of all the facts herein stated; that the same are correct and true; and that he does not have knowledge of any material fact in connection with such application which is not fully and accurately set forth herein.

E. The applicant represents and warrants that he has complied, and agrees that he will comply, in all respects, with all regulations, rulings, orders and instructions issued by the Secretary of the Treasury under Section 620(a), Public Law 87-195, and the Proclamation of the President of February 3, 1962, or under the authority of Section 5(b) of the Act of October 6, 1917, as amended, and with any and all licenses issued to the applicant pursuant thereto.

F. The applicant represents and warrants that no other application for a license authorizing the transaction here involved has been filed or is pending, except as follows:

Mapson Richardson

Frank Charnowicz

(Signature of applicant)

(If this application is filed by an agent, attorney, or other person, for or on behalf of the applicant, the following statement should be executed.)

I, , certify that I am the
(Relationship to applicant)

of (Name of applicant) who is the applicant in the above application for a license; that I am duly authorized to make the foregoing application on behalf of the applicant; that, except as otherwise specifically stated, I have personal knowledge of all the facts herein stated; that the same are true and correct; and that I do not have knowledge of any material facts in connection with said application which are not fully and accurately set forth herein.

.....
(Signature of agent)

.....
(Address)

NOTE.—If this application is executed outside of the United States, it must be executed under oath before a diplomatic or consular officer of the United States. Attention is directed to Title 18 U.S.C., Section 1001, which provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than 5 years, or both."

Copies of this form may be obtained at any Federal Reserve Bank or from the Foreign Assets Control, Treasury Department, Washington, D.C.

PLEASE PRINT OR TYPE

APPLICATION FOR A LICENSE

(To be executed and filed IN DUPLICATE with Foreign Assets Control, Federal Reserve Bank of New York, 33 Liberty Street, New York, New York 10045.) Attachments to applications, including any correspondence, are also required to be submitted IN DUPLICATE.

Date June 30, 1972

TO THE SECRETARY OF THE TREASURY
% Federal Reserve Bank of New York

Sir:

In accordance with Part 515 of Chapter V, Subtitle B, of Title 31 of the Code of Federal Regulations, the undersigned hereby applies for a license to execute the transaction described below:

Napoleon Richardson and Frank Chaimowicz, executors of the Estate of Concepcion Brodermann Stuetzel

A. (1) The name of the applicant is Napoleon Richardson and Frank Chaimowicz, executors of the Estate of Concepcion Brodermann Stuetzel

(2) Applicant resides at or, in the case of a corporation, partnership, association or other organization, has its principal place of business at

26 Ann Drive North Freeport New York U.S.
22 Burns Court Greenlawn New York U.S.
(Street) (City) (State) (Country)

(3) Applicant is and has been a citizen of U.S.

November 15, 1966 Respectively
since February 21, 1967
(Month) (Day) (Year)

(4) Since the applicant has been engaged in the business of Napoleon Richardson is employed by the City of New York in the Dept. of Social Services. Frank Chaimowicz is employed by the Union Underwear Co. in New York, New York. The decedent was a housewife.

B. The applicant desires a license in order to:

(State in detail the nature, purpose, and amount of the transaction, and the name, address, and extent of interest of every person, including the applicant, involved or interested in the transaction.)

Decedent was married in Havana, Cuba on Sept. 15, 1906 to Carl W. Stuetzel. Her husband died in Cuba on August 24, 1965. Mrs. Stuetzel immigrated to the United States as a permanent resident in 1969. She and her husband placed money and stocks for safekeeping with the New York branch of the Bank of Nova Scotia while they lived in Cuba.

License No. C-4369 dated February 19, 1970 authorized the Bank of Nova Scotia to pay to Concepcion Brodermann Stuetzel 50% of the blocked accounts on its books. Said 50% was subsequently received by Concepcion Brodermann Stuetzel.

Mrs. Stuetzel died on October 31, 1971 at the Nassau County Medical Center, East Meadow, N.Y.

Her will was admitted to probate by the Surrogate's Court of Nassau County. A certificate of appointment is attached.

Under the terms of the will, the residuary estate is given to Elena Richardson, a niece, daughter of Mrs. Stuetzel's sister and wife of Napoleon Richardson one of the executors/Applicant's No.

By the terms of Cuban Assets Control Rules and Regulations, 515.525, release of the blocked account to the executors should be allowed.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

76 Civ. 537

NAPOLEON RICHARDSON and FRANCISCO :
CHAIMOWICZ, as Executors of the Estate
of CONCEPCION BRODERMANN STUETZEL, also:
known as CONCEPCION BRODERMANN,

Plaintiffs,

-against-

ANSWER

WILLIAM E. SIMON, as Secretary of the
Treasury of the United States, and the :
BANK OF NOVA SCOTIA,

Defendants.

Defendant The Bank of Nova Scotia answers
the complaint as follows:

1. It has no knowledge or information
sufficient to form a belief as to the truth of any of
the allegations contained in paragraphs 1, 2, 3, 4, 7,
8, 9, 11, 12, 13, 14, 16 and 17.

2. It has no knowledge or information
sufficient to form a belief as to the truth of any of
the allegations contained in paragraphs 5 and 15 except
that there is presently an account with The Bank of Nova
Scotia in the name of Carl Stuetzel and/or Concepcion
Brodermann.

3. It has no knowledge or information
sufficient to form a belief as to the truth of any of

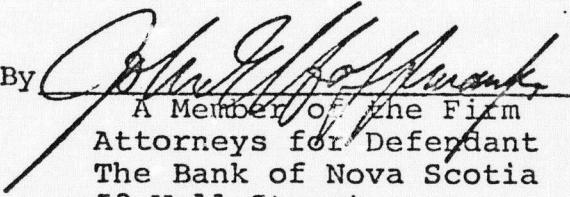
the allegations contained in paragraph 6 except it is aware of certain United States regulations known as Cuban Assets Control Regulations.

4. It has no knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph 10 except that subsequent to December 12, 1969, defendant The Bank of Nova Scotia paid 50 percent of the balance of the account.

Dated: New York, New York
May 10, 1976

SHEARMAN & STERLING

By


A Member of the Firm
Attorneys for Defendant
The Bank of Nova Scotia
53 Wall Street
New York, New York 10005
(212) 483-1000

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SAME CAPTION

NOTICE OF MOTION TO DISMISS

CIVIL ACTION #76 C 537

S I R S:

PLEASE TAKE NOTICE That defendant UNITED STATES OF AMERICA will move this Court before the Honorable Thomas C. Platt at Courtroom #7, Fourth Floor, United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on Friday, the 11th day of June, 1976 at 10:00 A.M. for an order dismissing the plaintiffs' complaint pursuant to Rule 12 (b)(1) of the Federal Rules of Civil Procedure on the grounds of lack of jurisdiction over the subject matter, or, in the alternative, for an order dismissing plaintiffs' complaint pursuant to Rule 12 (b)(6) of the Federal Rules of Civil Procedure on the grounds the complaint fails to state a claim upon which relief can be granted.

Dated: Brooklyn, New York
May 24, 1976

Yours, etc.

DAVID G. TRAGER
United States Attorney
Eastern District of New York
Attorney for Defendant,
William E. Simon
225 Cadman Plaza East
Brooklyn, New York 11201

By: (S) Constance M. Vecellio
CONSTANCE M. VECELLIO
Assistant U.S. Attorney

TO:

Samuel Gursky, Esq.
Attorney for Plaintiffs
342 Madison Avenue
New York, New York 10017

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SAME CAPTION : CIVIL ACTION FILE No. 76 C 537
: NOTICE OF MOTION FOR SUMMARY
: JUDGMENT

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affidavit of NAPOLEON RICHARDSON, sworn to the 7th day of June, 1976, and the complaint herein, the plaintiffs will move this Court before the HONORABLE THOMAS C. PLATT, at Courtroom #7, United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the 18th day of June, 1976, at 10:00 A.M. or as soon thereafter as counsel can be heard, for an order granting summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, upon the grounds that there is no genuine issue as to any material fact, and that plaintiffs are entitled to a judgment as a matter of law.

Dated: June 7, 1976

Yours, etc.,

SAMUEL GURSKY
Attorney for Plaintiffs
342 Madison Avenue
New York, New York 10017

TO:

DAVID G. TRAGER, ESQ.
United States Attorney
Eastern District of New York
Attorney for Defendant, William E. Simon
225 Cadman Plaza East
Brooklyn, New York
By: CONSTANCE M. VECCELLIO,
Assistant U.S. Attorney

SHEARMAN & STERLING, ESQS.
Attorneys for Defendant, Bank of Nova Scotia
53 Wall Street
New York, New York 10005

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SAME CAPTION	:	CIVIL ACTION No. 76 C 537
	:	AFFIDAVIT IN SUPPORT OF MOTION
	:	FOR SUMMARY JUDGMENT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

NAPOLEON RICHARDSON, being duly sworn, deposes and says:

I am one of the plaintiffs in this action and make this affidavit in support of the motion for summary judgment, and am familiar with the facts.

The facts which form the basis for the relief prayed for in the complaint, are as follows:

Concepcion Brodermann was born in Cuba on September 9, 1883. She was married to Carl W. Stuetzel on September 15, 1906 in Havana, Cuba. Her husband was born in what is now a part of West Germany, and became a citizen of Cuba in 1903.

During their marriage, Mr. & Mrs. Stuetzel had deposited with the Bank of Nova Scotia in New York City, approximately 1540 shares of Standard Oil Company of New Jersey (now known as Exxon Corp.) stock, and cash for safekeeping. The stocks and cash were in their joint names.

Carl W. Stuetzel died intestate in Havana, Cuba on August 24, 1965, leaving him surviving only his wife, Concepcion Brodermann Stuetzel. They had no children.

Mrs. Stuetzel came to the United States as a permanent resident, on October 13, 1969. On November 4, 1969 Concepcion Brodermann Stuetzel made application for the release of the shares

of stock and money held by the Bank of Nova Scotia. A copy of said application is attached to the complaint and is made a part hereof.

By license dated December 12, 1969 the Bank of Nova Scotia was authorized by the Secretary of the Treasury to release fifty (50%) per cent of the blocked account to Concepcion Brodermann Stuetzel; the other fifty (50%) per cent was to remain blocked. A copy of such license is attached to the complaint and is made a part hereof. Such fifty (50%) per cent was paid to Concepcion Brodermann Stuetzel.

Mrs. Stuetzel died on October 31, 1971 at the Nassau County Medical Center, East Meadow, New York. Her Will was admitted to probate by the Surrogate's Court of Nassau County, and the plaintiffs herein were appointed executors thereof in accordance with that provision in her Will. The Will also provides that Elena Richardson, her niece, is to receive the residuary estate which is the blocked funds and the shares of Exxon stock. Both plaintiffs who are the executors, and Elena Richardson, are citizens of the United States and reside in the Eastern District of New York State.

Thereafter, on June 30, 1972, the executors of the Estate of Concepcion Brodermann Stuetzel applied for a license for the release and unblocking of the remaining fifty (50%) per cent in the hands of the Bank of Nova Scotia.

This application was denied by the Secretary of the Treasury. The cash in the approximate sum of \$12,873.99 and 770 shares of Exxon Corp. still remains in safekeeping with the Bank of Nova Scotia.

The refusal by the Secretary of the Treasury by his Foreign Assets Control director to release the remaining fifty (50%) per cent, constitutes a deprivation of property without due process of law, belonging to the executors and to the niece of Concepcion Brodermann Stuetzel, who will receive same when the estate is to be distributed.

The Cuban Government has no interest in this estate and neither does any Cuban National. Refusing to release such funds to the American citizens exceeds the authority given by statute and its regulations.

The government in its Memorandum of Law admits the facts alleged in the complaint for the purposes of its motion to dismiss. To the best of my knowledge and belief, the facts alleged herein and in the complaint are true, and cannot be disputed for any purpose.

WHEREFORE, I respectfully urge that the motion for summary judgment be granted.

(S) Napoleon Richardson
Napoleon Richardson

Sworn to before me this
7th day of June, 1976.

(S) Samuel Gursky
Notary Public

SAMUEL GURSKY, Notary Public
State of New York, No. 31-1607250
Qualified in New York County
Commission Expires March 30, 1977

Letters Testamentary

THE PEOPLE OF THE STATE OF NEW YORK

By The Grace of God Free and Independent

TO NAPOLEON RICHARDSON, 26 Ann Drive, Freeport, New York, and
FRANCISCO CHAIMOWICZ, 22 Burns Court, Greenlawn, New York

SEND GREETINGS:

WHEREAS, the Last Will and Testament of

CONCEPCION BRODERMANN STUETZEL, also
known as CONCEPCION BRODERMANN,

deceased, was duly admitted to probate by decree of the Judge of
the Surrogate's Court of Nassau County, New York, on the 2nd day
of June, 1972, which directed the issuance to you of Letters
Testamentary upon your qualifying according to law;

NOW, THEREFORE, KNOW YE that you are hereby appointed
Executors of said Will and authorized to administer the estate
of the said deceased subject to the laws appertaining thereto
and the jurisdiction and supervision of this Court.

IN TESTIMONY WHEREOF, we have caused the seal of the
Surrogate's Court of Nassau County to be hereunto affixed.

WITNESS, HON. RICHARD C. DELIN, Judge of the Surro-
(SEAL) gate's Court of the County of Nassau, at Mineola,
New York, this 2nd day of June, 1972.

Michael P. Rich
Clerk of the Surrogate's Court

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

NAPOLEON RICHARDSON and FRANCISCO CHAIMOWICZ, as Executors of the Estate of CONCEPCION BRODERMANN STUETZEL, also known as CONCEPCION BRODERMANN, : 76 Civ. 537 (TCP)

AFFIDAVIT

Plaintiffs, :

-against-

WILLIAM E. SIMON, as Secretary of the Treasury of the United States, and the BANK OF NOVA SCOTIA, :

Defendants. :

-----x

STATE OF NEW YORK,
COUNTY OF NEW YORK.

MARK ZEICHNER, being duly sworn says:

1. I am an attorney associated with Shearman & Sterling, attorneys for defendant Bank of Nova Scotia (the "Bank"), and I submit this affidavit upon the motion by co-defendant, the United States of America, to dismiss, and in response to plaintiff's motion for summary judgment; this affidavit is made upon the basis of information supplied to me by the Bank.

2. The Bank maintains an account in New York in the name of Carl Stuetzel and/or Concepcion Brodermann, the latter apparently also known as Concepcion Brodermann Stuetzel. The account is subject

to a joint account agreement providing for payment to either, or to the survivor upon the death of either.

3. Pursuant to a license dated December 12, 1969 issued by Foreign Assets Control on behalf of the United States Treasury, the Bank paid 50% of the account to Concepcion Broermann Stuetzel.

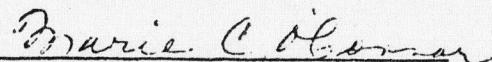
4. As of March 16, 1976 there is a balance of \$13,547.74 to the credit of said account. As of April 2, 1976, there are 770 shares of Exxon Corporation held by the Bank for said account.

5. The Bank is not interested in said account except to pay the balance to the person or persons rightfully entitled thereto.


MARK ZEICHNER

Sworn to before me this

14th day of June, 1976



MARIE C. O'CONNOR
Notary Public, State of New York
No. 24-2936800 Qual. in Kings Co.
Certificate filed in New York County
Commission Expires March 30, 1977.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NAPOLEON RICHARDSON and FRANCISCO
CHAIMOWICZ, as Executors of the
Estate of CONCEPCION BRODERMANN
STUETZEL, also known as CONCEPCION
BRODERMANN

Plaintiffs

CIVIL ACTION FILE
#76 C 537

- against -

WILLIAM E. SIMON, as Secretary of
the Treasury of the United States,
and the BANK OF NOVA SCOTIA

Defendants

STATEMENT PURSUANT TO RULE 9 (g)
ON A MOTION FOR SUMMARY JUDGMENT

The following facts are conceded to be true:

1. Plaintiffs were named executors in the Will of Concepcion Brodermann Stuetzel, also known as Concepcion Brodermann, and such Will was admitted to probate by the Surrogate's Court of Nassau County.
2. Plaintiffs were and are residents of Nassau County, State of New York.
3. Defendant, William E. Simon, is Secretary of the Treasury of the United States. Predecessor Secretaries of State were authorized to formulate and issue and administer certain regulations known as Cuban Assets Control Regulations.
4. The decedent, Concepcion Brodermann Stuetzel, was married to Carl W. Stuetzel and lived with her husband in Cuba.

5. During the lifetime of her husband and herself, she and her husband jointly deposited for safekeeping, cash and stock certificates of the Standard Oil Company of New Jersey, with the defendant, New York Branch of the Bank of Nova Scotia, in a sum in excess of Ten Thousand (\$10,000.00) Dollars.

6. With the advent of the Castro Regime, the United States blocked or froze all assets of Cuban Nationals in the United States.

7. Carl W. Stuetzel died in Cuba on August 24, 1965.

8. Concepcion Brodermann Stuetzel, his widow, entered the United States as a permanent resident on October 13, 1969.

9. On or about November 4, 1969 Concepcion Brodermann Stuetzel made application for a license to release the moneys in the joint account in the Bank of Nova Scotia in New York, New York and the shares of stock of Standard Oil Company of New Jersey which were in the names of her husband and herself.

10. On or about December 12, 1969 the Secretary of the Treasury authorized the Bank of Nova Scotia, New York, New York to pay 50% of the balance of the blocked dollar and safekeeping accounts on its books in the name of Concepcion Brodermann Stuetzel and/or Carl W. Stuetzel but refused to release the remaining 50%.

11. On October 31, 1971 Concepcion Brodermann Stuetzel died in the Nassau County Medical Center, East Meadow, New York, a permanent resident of Nassau County, State of New York.

12. Under the terms of her Will the residuary estate (which consists of the blocked assets in the possession of the Bank of

Nova Scotia) is devised to a niece, Elena Richardson, a daughter of the testatrix's sister.

13. That said Elena Richardson, Napoleon Richardson, and Francisco Chaimowicz are citizens of the United States residing in the State of New York.

14. Thereafter, on or about June 30, 1972, plaintiffs, as executors of the estate of Concepcion Brodermann Stuetzel, filed an application with the Foreign Assets Control of the Treasury Department of the United States for the release of the remaining blocked money and shares of stock of the Standard Oil Company of New Jersey (now known as Exxon Corp.) consisting of \$12,873.99 in cash, and 770 shares of Exxon Corp., the present value of which is \$68,145.00.

15. That the Secretary of the Treasury by his acting director of Foreign Assets Control has refused to release and unblock the said assets which are the property of the estate of Concepcion Brodermann Stuetzel, still in the possession of the New York branch of the Bank of Nova Scotia.

Dated: June 25, 1976

(S) SAMUEL GURSKY

Samuel Gursky
Attorney for Plaintiffs

DAVID G. TRAGER
United States Attorney
Eastern District of New York
Attorney for Defendant,
William E. Simon

By:

Constance M. Vecellio
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NAPOLEON RICHARDSON AND FRANCISCO
CHAIMOWICZ, as Executors of the
Estate of CONCEPCION BRODERMANN
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BRODERMANN

Plaintiffs

- against -

WILLIAM E. SIMON, as Secretary of
the Treasury of the United States,
and the BANK OF NOVA SCOTIA

Defendants

CIVIL ACTION FILE #76 C 537

SUPPLEMENTAL
AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NASSAU)

NAPOLEON RICHARDSON, being duly sworn, deposes and says:

I am one of the executors-plaintiffs in this action, and make this supplemental affidavit in reply to the statement dated July 30, 1976 and received by plaintiffs' attorney on August 4, 1976, made by the U. S. Attorney, pursuant to Rule 9 (g) of the Rules of this Court. It is to be noted that plaintiffs' statement was served on June 28, 1976, 34 days prior to that of the U. S. Attorney's statement.

The first paragraph of the Government's statement merely asserts a conclusion that the assets involved are part of the "blocked estate of Carl W. Stuetzel". No affidavit in opposition to the plaintiffs' motion on this point or any other, has been submitted by the Government. The denial is not based on any fact. Neither is it based on any theory of law, Cuban or New York.

I was admitted to the Bar of Cuba in 1942 and practiced law there until 1960 when I came to the United States. I am familiar with Cuban law and state that since Carl W. Stuetzel died leaving only his wife surviving, (they had no children), she was entitled to all of his estate.

The affidavit of Mark Zeichner, sworn to June 14, 1976, as attorney for the Bank of Nova Scotia, submitted on this motion for summary judgment, states the "account is subject to a joint account agreement providing for payment to either or to the survivor upon the death of either".

Under the Cuban law, the entire fund or "account" as the Bank of Nova Scotia calls it, belonged to Carl W. Stuetzel's wife, Concepcion Brodermann Stuetzel, upon her husband's death. I am advised this is the New York law also.

Not one single fact has been submitted by the Government which shows that this "account" belonged to anyone but Concepcion Brodermann Stuetzel.

In addition, I am the son-in-law of the sister of Concepcion Brodermann Stuetzel and the husband of Elena Richardson and familiar with the family of Concepcion and Carl W. Stuetzel, and know of my own personal knowledge and contacts with the family that Carl W. Stuetzel died intestate, and I have said so in my affidavit in support of the motion for summary judgment; that Carl W. Stuetzel had no estate to be administered in Cuba; or that there were any heirs-at-law of Carl W. Stuetzel who were entitled to share in his estate even if he were to have had one;

that Carl W. Stuetzel had no creditors; that he had been retired for several years prior to his death. There is no person, except his wife, Cuban or otherwise, who had any interest in his "estate" or the funds now in possession of the Bank of Nova Scotia.

WHEREFORE, I respectfully request that summary judgment be granted to the plaintiffs.

(S) NAPOLEON RICHARDSON

Sworn to before me, this
9th day of August, 1976.

(S) JOAN M. RAINALDI
Notary Public, State of New York

No. 30-4523498
Qualified in Nassau County
Commission expires 3/30/78

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NAPOLEON RICHARDSON and FRANCISCO
CHAIMOWICZ, as Executors of the
Estate of CONCEPCION BRODERMANN
STUETZEL, also known as CONCEPCION
BRODERMANN

Plaintiffs

... CIVIL ACTION FILE #76 C 537

- against -

WILLIAM E. SIMON, as Secretary of
the Treasury of the United States,
and the BANK OF NOVA SCOTIA

Defendants

STATEMENT PURSUANT TO RULE 9 (g)
OF THE LOCAL RULES OF THIS COURT
IN OPPOSITION TO PLAINTIFFS' MO-
TION FOR SUMMARY JUDGMENT

Defendant William E. Simon, as Secretary of the Treasury of the United States, contests the following fact contained in the Statement Pursuant to Rule 9 (g) submitted by plaintiffs herein:

1. With respect to the facts set forth in paragraph 15 of plaintiffs' Statement Pursuant to Rule 9 (g), denies that the assets described therein which the Secretary of the Treasury has refused to release and unblock are the property of the estate of Concepcion Brodermann Stuetzel and assets that those assets are part of the blocked estate of Carl W. Stuetzel.

Defendant Simon also asserts that the following material facts, not referred to in plaintiffs' Statement Pursuant to Rule 9 (g), present a genuine issue for trial:

1. Whether Carl Stuetzel died intestate.
2. Whether his estate was administered in Cuba.
3. Whether there were any heirs in addition to his widow, Concepcion Brodermann Stuetzel.
4. Whether there were any Cuban creditors, or any other Cuban nationals, with an interest in the estate of Carl W. Stuetzel.

Dated: Brooklyn, New York

July 30, 1976

DAVID G. TRAGER
United States Attorney
Eastern District of New York
Attorney for Defendant Simon
225 Cadman Plaza East
Brooklyn, New York 11201

By: (S)

CONSTANCE M. VECELLIO
Assistant U. S. Attorney

TO:

Samuel Gursky, Esq.
Attorney for Plaintiffs
342 Madison Avenue
New York, New York 10017

Shearman & Sterling, Esqs.
Attorneys for Defendant,
Bank of Nova Scotia
53 Wall Street
New York, New York 10005

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

NAPOLEON RICHARDSON and FRANCISCO
CHAIMCWICZ, as Executors of the
Estate of CONCEPCION BRODERMANN
STUETZEL, also known as CONCEPCION
BRODERMANN,

76 C 537

MEMORANDUM AND
ORDER

Plaintiffs,

October 8, 1976

-against-

WILLIAM E. SIMON, as Secretary of
the Treasury of the United States,
and the BANK OF NOVA SCOTIA,

Defendants.

-----x

PLATT, D.J.

Defendants have moved to dismiss the plaintiffs' complaint pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure on the grounds (i) that this Court lacks jurisdiction over the subject matter, or, in the alternative, pursuant to Rule 12(b)(6) on the grounds (ii) that the complaint fails to state a claim upon which relief can be granted. Plaintiffs have made a cross motion for summary judgment pursuant to Rule 56 on the ground that plaintiffs are entitled to a judgment as a matter of law.

FACTS

The following facts have been admitted by the parties for the purposes of these motions:

Carl W. Stuetzel died intestate in Havana, Cuba, on August 24, 1965. Stuetzel's only heir-at-law, his wife Concepcion Brodermann Stuetzel, entered the United States as a permanent resident on October 13, 1969. Shortly thereafter, she applied for a license seeking release of certain assets held in a joint bank account in the Bank of Nova Scotia which had been frozen by the Secretary of the Treasury pursuant to the Trading with the Enemy Act¹ and the Regulations promulgated thereunder.² On December 12, 1969, a license was issued by the Secretary releasing fifty-percent of the blocked assets to Mrs. Stuetzel. The remaining fifty-percent, consisting of cash in the approximate sum of \$12,873 and 770 shares of Exxon Corporation stock, was retained in a blocked account at the Bank of Nova Scotia.

Mrs. Stuetzel died on October 31, 1971. Her will devised the blocked assets to Elena Richardson, a niece of Mrs. Stuetzel and a citizen and resident of the United States. The plaintiffs, also citizens and residents of the United States, were named as executors of the decedent's estate.

On June 30, 1972, the plaintiffs applied to the Secretary for a license unblocking the remaining fifty-percent of the assets. This application was denied.

On March 19, 1976, the plaintiffs filed the complaint herein alleging that the refusal to release the assets consti-

tutes a deprivation of property without due process of law, and that such refusal exceeds the authority granted by the statute, 50 U.S.C. App. § 5.

I

The constitutionality of the Trading with the Enemy Act and the Regulations promulgated thereunder is well established in this Circuit. Sardino v. Federal Reserve Bank of New York, 361 F.2d 106 (2d Cir.), cert. denied, 385 U.S. 898 (1966);³ Teague v. Regional Commissioner of Customs, 404 F.2d 441 (2d Cir. 1968), cert. denied, 394 U.S. 977, rehearing denied, 395 U.S. 930 (1969). These cases are dispositive of plaintiffs' first argument.

II

Plaintiffs further argue that the Regulations are inconsistent with the Trading with the Enemy Act and that there is no foreign interest that can be frozen by the Treasury Department. They contend that this case should be decided in accordance with a recent Fifth Circuit decision, Real v. Simon, 510 F.2d 557 (5th Cir. 1975), rehearing denied, 514 F.2d 738. They argue, as the plaintiffs did in Real, that the Regulations are invalid as applied.

Defendants, on the other hand, contend that the Cuban Assets Control Regulations validly prohibit, unless licensed, the transfer of the estate of a deceased Cuban national, blocked prior to his death, even though the claimants are residents or citizens of the United States, and that pursuant

to these Regulations this Court lacks jurisdiction to order a transfer of blocked property in the absence of a Treasury license authorizing such a transfer. Accordingly, they argue that the complaint should be dismissed.

The permissible scope of review of administrative action is extremely limited; and there is a presumption that actions by an agency in interpreting and applying its own statutes and regulations are valid. Udall v. Tallman, 380 U.S. 1 (1965). The standard is whether the administrative action is arbitrary, capricious, or an abuse of discretion. Rochester Telephone Corp. v. U.S., 307 U.S. 125 (1939).

In Real, the Fifth Circuit held that the Treasury Regulations were not authorized by the Trading with the Enemy Act. The Court reasoned that where no foreign national claims an interest in the assets the Regulations violate the intent of the Congress in enacting the Trading with the Enemy legislation.

The Court in the Real case relied on the Congressional Committee Report in interpreting the Congressional intent. The Court stressed the Committee recommendation that,

"In the committee's view, if the assets are wholly or substantially owned by citizens and residents of United States they should be unblocked, since it is possible that such assets may be placed in a fund at some future date and used to pay the claims of American citizens against the Cuban Government. This would be tantamount to using the property of one U.S. citizen to pay the claim of another U.S. citizen."

S. Rep. No. 701, 89th Cong., 1st Sess. (1965), U.S. Code Cong. and Admin. News, pp. 3581, 3585.

However, this recommendation referred only to those assets in the United States which were beneficially owned by Americans on or before July 8, 1963, the date that the freeze went into effect. See Nielsen v. Secretary of the Treasury, 424 F.2d 833, 845 (D.C. Cir. 1970).

Furthermore, the Second Circuit has held that the Cuban Assets Control Regulations are authorized under the Trading with the Enemy Act. Sardino v. Federal Reserve Bank of New York, supra.

In addition, both the Supreme Court and the Second Circuit have recognized that the Act and the Regulations promulgated thereunder play an important part in this country's foreign policy. In Banco Nacional de Cuba v. Sabbatino, 376 U.S. 393 (1964), the Supreme Court acknowledged (at p. 412),

"the freezing of Cuban assets exemplifies the capacity of the political branches to assure, through a variety of techniques. . . , that the national interest is protected against a country which is thought to be improperly denying the rights of United States citizens".

See Sardino v. Federal Reserve Bank of New York, supra.

Finally, it would greatly undermine the effectiveness of this Act if the Courts looked to any date other than the date when the Regulations became effective in determining whether a foreign interest exists. Cuban nationals would otherwise be permitted to sell assets located in America to Cuban refugees in order to circumvent the Act. The parties could, under Real, apply for a Treasury license and

effectively free the formerly blocked assets. We cannot presume that Congress intended to create such a loophole.

In summary, this Court concludes that the Regulations have a basis in law and are within the granted authority. See Red Lion Broadcasting Corp. v. FCC, 395 U.S. 367 (1969).

Accordingly, this Court will not order the transfer of property in which a Cuban interest exists where, as in the instant case, there is no Treasury license authorizing such a transfer.

Clark v. Propper, 169 F.2d 324 (2d Cir. 1948); Orvis v. Brownell, 345 U.S. 183 (1953).

For the foregoing reasons, plaintiffs' motion for summary judgment is denied and defendants' motion to dismiss plaintiffs' complaint is granted.

Thurman C. Act
U.S.D.J.

FOOTNOTES

1.

Section 5(b) (1) of the Trading with the Enemy Act, 50 App. U.S.C. § 5, says that:

"During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through or to any banking institution and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States."

These provide:

§ 515.201. Transactions involving designated foreign countries or their nationals; effective date.

(a) All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury (or any person, agency, or instrumentality designated by him) by means of regulations, rulings, instructions, licenses, or otherwise, if either such transactions are by, or on behalf of, or pursuant to the direction of a foreign country designated under this part, or any national thereof, or such transactions involve property in which a foreign country designated under this part, or any national thereof, has at any time on or since the effective date of this section had any interest of any nature whatsoever, direct or indirect:

(1) All transfers of credit and all payments between, by, through, or to any banking institution or banking institutions wheresoever located, with respect to any property subject to the jurisdiction of the United States or by any person (including a banking institution) subject to the jurisdiction of the United States;

(2) All transactions in foreign exchange by any person within the United States; and

(3) The exportation or withdrawal from the United States of gold or silver coin or bullion, currency or

securities, or the earmarking of any such property, by any person within the United States.

(b) All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury (or any person, agency, or instrumentality designated by him) by means of regulations, rulings, instructions, licenses, or otherwise, if such transactions involve property in which any foreign country designated under this part, or any national thereof, has at any time on or since the effective date of this section had any interest of any nature whatsoever, direct or indirect:

(1) All dealings in, including, without limitation, transfers, withdrawals, or exportations of, any property or evidences of indebtedness or evidences of ownership of property by any person subject to the jurisdiction of the United States; and

(2) All transfers outside the United States with regard to any property or property interest subject to the jurisdiction of the United States.

(c) Any transaction for the purpose or which has the effect of evading or avoiding any of the prohibitions set forth in paragraphs (a) or (b) of this section is hereby prohibited.

(d) For the purposes of this part, the term "foreign country designated under this part" and the term "designated foreign country" mean Cuba and the term "effective date" and the term "effective date of this section" mean with respect to Cuba, or any national thereof, 12:01 a. m., e. s. t., July 8, 1963.

3. As the Court said in Sardino (at p. 111):

It does not follow, however, that in dealing with the property of an alien the United States must be blind to the acts of the country of which he is a national; the Constitution protects the alien from arbitrary action by our government but not from reasonable response to such action by his own. The world today is not the classical international law world of black squares and white squares, where everyone is either an enemy or a friend. We are not formally at war with Cuba but only in a technical sense are we at peace—as the Havana Conference, held since this appeal was argued, has dramatically shown. The founders could not have meant to tie one of the nation's hands behind its back by requiring it to treat as a friend a country which has launched a campaign of subversion throughout the Western Hemisphere. Compare *Dennis v. United States*, 341 U.S. 494, 561-576, 71 S.Ct. 857, 95 L.Ed. 1137 (1951) (concurring opinion of Mr. Justice Jackson). Hard currency is a weapon in the struggle between the free and the communist worlds; it would be a strange reading of the Constitution to regard it as demanding depletion of dollar resources for the benefit of a government seeking to create a base for activities inimical to our national welfare. The Supreme Court's approval of wartime seizure of assets of a non-enemy alien "as a means of avoiding the use of the property to draw earnings or wealth out of this country to territory where it may more likely be used to assist the enemy than if it remains in the hands of this government," *Silesian-American Corp. v. Clark*, 332 U.S. 469, 476, 68 S.Ct. 179, 182, 92 L.Ed. 81 (1947), is broad enough to justify the refusal of a license to Sardino. (sic)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NAPOLEON RICHARDSON and FRANCISCO
CHAIMOWICZ, as Executors of the
Estate of CONCEPCION BRODERMANN
STUETZEL, also known as CONCEPCION
BRODERMANN

Plaintiffs,

- against -

WILLIAM E. SIMON, as Secretary of
the Treasury of the United States,
and the BANK OF NOVA SCOTIA

Defendants

JUDGMENT

File No. 76 C 537

A memorandum and order of Honorable Thomas C. Platt,
United States District Judge, having been filed on October 8,
1976, denying plaintiffs' motion for summary judgment and grant-
ing defendants' motion to dismiss the complaint, it is

ORDERED AND ADJUDGED that the plaintiffs take nothing
of the defendants and that defendants' motion to dismiss the
complaint is granted.

Dated: October 8, 1976
Brooklyn, New York

(S) LEWIS ORGEL

Clerk

By: (S) THOMAS B. COSTELLO

Chief Deputy Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NAPOLEON RICHARDSON and FRANCISCO
CHAIMOWICZ, as Executors of the
Estate of CONCEPCION BRODERMANN
STUETZEL, also known as CONCEPCION
BRODERMANN

CIVIL ACTION FILE #76 C 537

Plaintiffs

- against -

WILLIAM E. SIMON, as Secretary of
the Treasury of the United States,
and the BANK OF NOVA SCOTIA

Defendants

SIRS:

Notice is hereby given that NAPOLEON RICHARDSON and
FRANCISCO CHAIMOWICZ, as Executors of the estate of CONCEPCION
BRODERMANN STUETZEL, also known as CONCEPCION BRODERMANN, plain-
tiffs above named, hereby appeal to the United States Court of
Appeals for the Second Circuit from the judgment and order made
and entered in the above entitled action on October 8, 1976 deny-
ing plaintiffs' motion for summary judgment and granting the
motion to dismiss the complaint.

Dated: October 25, 1976

SAMUEL GURSKY
Attorney for Plaintiffs
Appellants Napoleon Richardson
and Francisco Chaimowicz, as
Executors of the Estate of
Concepcion Brodermann Stuetzel,
also known as Concepcion Brodermann
342 Madison Avenue
New York, New York 10017

TO:

Clerk of the United States District Court
Eastern District of New York

DAVID G. TRAGER, ESQ.

United States Attorney, Eastern District of New York
Attorney for Defendant-Appellee William E. Simon,
as Secretary of the Treasury of the United States
225 Cadman Plaza East
Brooklyn, New York 11201

SHEARMAN & STERLING, ESQS.

Attorneys for Defendant, Bank of Nova Scotia
53 Wall Street
New York, New York 10005

State of New York)
County of New York) ss:

Samuel Gursky, being duly sworn, deposes and says:

That on the day of December, 1976 he served the
within appendix upon David G. Trager, Esq., United States
Attorney for the Eastern District of New York, as attorney
for the defendant, William E. Simon, as Secretary of the
Treasury by depositing two true copies of the same
securely enclosed in a post paid wrapper in the Post Office
maintained and exclusively controlled by the U.S. Post Office
Department at Lexington Ave. & 5th Street, New York, N.Y.
directed to said attorney at 225 Cadman Plaza East, Brooklyn,
N.Y. 11201 that being the address within the state designated
by him for that purpose upon preceding papers in this action

Deponent is over the age of 21 years.

Sworn to before me this

30th day of December, 1976

Samuel Gursky

ROTHSTEIN, CHAPKIN & CO., New York
Certified Copy to Plaintiff
Certified Copy to Defendant

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